

# **Chapter 6, P.L. 2005**

(Approved January 19, 2005)

[First Reprint]

**ASSEMBLY, No. 3088**

**STATE OF NEW  
JERSEY**

**211th LEGISLATURE**

INTRODUCED JUNE 21, 2004

**Sponsored by:**

**Assemblyman NEIL M. COHEN**

**District 20 (Union)**

**Co-Sponsored by:**

**Assemblyman Chivukula, Senators B.Smith and  
Martin**

**SYNOPSIS**

Permits recall of retired administrative law judges  
and retired judges of compensation.

**CURRENT VERSION OF TEXT**

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As reported by the Assembly Budget Committee on  
June 21, 2004, with amendments.

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

**<sup>1</sup> Assembly ABU committee amendments adopted June 21, 2004.**

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**(Sponsorship Updated As Of: 12/14/2004)**

AN ACT concerning the retirement of administrative law judges <sup>1</sup>and judges of compensation<sup>1</sup>, amending P.L.1978, c.67 <sup>1</sup>and R.S.34:15-49<sup>1</sup>.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

1. Section 4 of P.L.1978, c.67 (C.52:14F-4) is amended to read as follows:

4. Permanent administrative law judges shall be appointed by the Governor with the advice and consent of the Senate to initial terms of one year. During this initial term, each judge shall be subject to a program of evaluation as delineated in section 5 of P.L.1978, c.67 (C.52:14F-5). First reappointment of a judge after this initial term shall be by the Governor for a term of four years and until the appointment and qualification of the judge's successor.

Administrative law judges nominated by the Governor before July 1, 1981 shall, upon their confirmation by the Senate, serve for terms of five years and until the appointment and qualification of their successors.

Subsequent reappointments of a judge shall be by the Governor with the advice and consent of the Senate to terms of five years and until the appointment and qualification of the judge's successor. The advice and consent of the Senate, as provided in this section, shall be exercised within 45 days after a nomination for appointment has been submitted to the Senate, and if no action has been taken within the 45-day period, the nomination shall be deemed confirmed. This 45-day period shall not apply to any person nominated by the Governor for the position of administrative law judge prior to July 1, 1981.

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Assembly ABU committee amendments adopted June 21, 2004.

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The annual salary for an administrative law judge during the initial term of one year shall be equal to 75% of the annual salary of a Judge of the Superior Court. The annual salary for a judge during the first year of the first reappointment shall be increased to 78 2/3 % of the annual salary of a Judge of the Superior Court. Upon receipt of satisfactory annual evaluations, the annual salary for a judge shall be increased to 81 2/3 % of the annual salary of a Judge of the Superior Court for the second year of the first reappointment and to 85% of the annual salary of a Judge of the Superior Court for the third year of the first reappointment. The annual salary shall be 85% of the annual salary of a Judge of the Superior Court for the fourth year of the first reappointment and for each year of subsequent reappointments thereafter.

In addition to salary, an administrative law judge regularly assigned as an assignment judge shall receive \$2,500 annually as additional compensation, and a judge regularly assigned other administrative or supervisory duties shall receive \$1,500 annually as additional compensation.

All administrative law judges, including the Chief Administrative Law Judge, shall be retired upon attaining the age of 70 years, except that any administrative law judge who has retired on pension or retirement allowance may, with the judge's consent, be recalled by the Director/Chief Administrative Law Judge of the Office of Administrative Law for service as a recalled judge in the Office of Administrative Law.

<sup>1</sup>No recalled judge shall serve beyond his 80th birthday.

Upon such recall the retired judge shall have all the powers of an administrative law judge and shall be paid a per diem allowance fixed by the Director/ Chief Administrative Law Judge. In addition the recalled judge shall be reimbursed for reasonable expenses actually incurred by him in connection with his assignment and shall be provided with such facilities as may be required in the performance of his duties. Such per diem compensation and expenses shall be paid by the State. Payment for services and expenses shall be made in the same manner as payment is made to the judges of the Office of Administrative Law from which he

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retired.<sup>1</sup>

(cf: P.L.1999, c.380, s.9)

<sup>1</sup>2. Section 5 of P.L.1978, c.67 (C.52:14F-5) is amended to read as follows:

5. The Director and Chief Administrative Law Judge of the Office of Administrative Law shall:

a. Administer and cause the work of the office to be performed in such manner and pursuant to such program as may be required or appropriate;

b. Organize and reorganize the office, and establish such bureaus as may be required or appropriate;

c. Except as otherwise provided in subsections l. and t., below, appoint, pursuant to the provisions of Title 11A of the New Jersey Statutes, such clerical assistants and other personnel as may be required for the conduct of the office;

d. Assign and reassign personnel to employment within the office;

e. Develop uniform standards, rules of evidence, and procedures, including but not limited to standards for determining whether a summary or plenary hearing should be held to regulate the conduct of contested cases and the rendering of administrative adjudications;

f. Promulgate and enforce such rules for the prompt implementation and coordinated administration of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) as may be required or appropriate;

g. Administer and supervise the procedures relating to the conduct of contested cases and the making of administrative adjudications, as defined by section 2 of P.L.1968, c.410 (C.52:14B-2);

h. Advise agencies concerning their obligations under the Administrative Procedure Act, subject to the provisions of subsections b. and e. of section 4 of P.L.1944, c.20 (C.52:17A-4);

i. Assist agencies in the preparation, consideration, publication and interpretation of administrative rules required or appropriate pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et

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seq.);

j. Employ the services of the several agencies and of the employees thereof in such manner and to such extent as may be agreed upon by the director and the chief executive officer of such agency;

k. Have access to information concerning the several agencies to assure that they properly promulgate all rules required by law;

l. Assign permanent administrative law judges at supervisory and other levels who are qualified in the field of administrative law or in subject matter relating to the hearing functions of a State agency.

Administrative law judges shall receive such salaries as provided by section 4 of P.L.1978, c.67 (C.52:14F-4), as amended by P.L.1999, c.380, shall not engage in the practice of law and shall devote full time to their judicial duties.

Administrative law judges appointed after the effective date of this amendatory act shall have been attorneys-at-law of this State for a minimum of five years. An administrative law judge appointed prior to the effective date of this amendatory act shall not be required to be an attorney or, if an attorney, shall not be required to have been an attorney-at-law for five years in order to be reappointed;

m. Appoint additional administrative law judges, qualified in the field of administrative law or in a subject matter relating to the hearing functions of a State agency, on a temporary or case basis as may be necessary during emergency or unusual situations for the proper performance of the duties of the office , pursuant to a reasonable fee schedule established in advance by the director. Administrative law judges appointed pursuant to this procedure shall have the same qualifications for appointment as permanent administrative law judges;

n. Assign administrative law judges to conduct contested cases as required by sections 9 and 10 of P.L.1968, c.410 (C.52:14B-9 and 52:14B-10). Proceedings shall be scheduled for suitable locations, either at the offices of the Office of Administrative Law or elsewhere in the State, taking into consideration the convenience of the witnesses and parties, as well as the nature of the cases and proceedings;

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o. Assign an administrative law judge or other personnel, if so requested by the head of an agency and if the director deems appropriate, to any agency to conduct or assist in administrative duties and proceedings other than those related to contested cases or administrative adjudications, including but not limited to rule-making and investigative hearings;

p. Assign an administrative law judge not engaged in the conduct of contested cases to perform other duties vested in or required of the office;

q. Secure, compile and maintain all reports of administrative law judges issued pursuant to this act, and such reference materials and supporting information as may be appropriate;

r. Develop and maintain a program for the continuing training and education of administrative law judges and agencies in regard to their responsibilities under this act;

s. Develop and implement a program of judicial evaluation to aid himself in the performance of his duties, and to assist in the making of reappointments under section 4 of P.L.1978, c.67 (C.52:14F-4). This program of evaluation shall focus on three areas of judicial performance: competence, productivity, and demeanor. It shall include consideration of: industry and promptness in adhering to schedules, making rulings and rendering decisions; tolerance, courtesy, patience, attentiveness, and self-control in dealing with litigants, witnesses and counsel, and in presiding over contested cases; legal skills and knowledge of the law and new legal developments; analytical talents and writing abilities; settlement skills; quantity, nature and quality of caseload disposition; impartiality and conscientiousness. The director shall develop standards and procedures for this program, which shall include taking comments from selected litigants and lawyers who have appeared before a judge. The methods used by the judge but not the result arrived at by the judge in any case may be used in evaluating a judge. Before implementing any action based on the findings of the evaluation program, the director shall discuss the findings and the proposed action with the affected judge. The

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evaluation by the director and supporting data shall be submitted to the Governor at least 90 days before the expiration of any term. These documents shall remain confidential and shall be exempted from the requirements of P.L.1963, c.73 (C.47:1A-1 et seq.);

t. Promulgate and enforce rules for reasonable sanctions, including assessments of costs and attorneys' fees which may be imposed on a party, and attorney or other representative of a party who, without just excuse, fails to comply with any procedural order or with any standard or rule applying to a contested case and including the imposition of a fine not to exceed \$1,000.00 for misconduct which obstructs or tends to obstruct the conduct of contested cases; and

u. Have power in connection with contested case hearings (1) to administer oaths to any and all persons, (2) to compel by subpoena the attendance of witnesses and the production of books, records, accounts, papers, and documents of any person or persons, (3) to entertain objections to subpoenas, and (4) to rule upon objections to subpoenas except, that any orders of administrative law judges regarding these objections may be reviewed by the agency head before the completion of the contested case in accordance with procedural rules, adopted by the Director and Chief Administrative Law Judge of the Office of Administrative Law. Misconduct by any party, attorney or representative of a party or witness which obstructs or tends to obstruct the conduct of a contested case or the failure of any witness, when duly subpoenaed to attend, give testimony or produce any record, or the failure to pay any sanction assessed pursuant to subsection t. of this section, shall be punishable by the Superior Court in the same manner as such failure is punishable by such court in a case pending therein.

v. Assign any judge recalled pursuant to section 4 of P.L.1978, c.67 (C.52:14F-4) and fix the per diem allowance.<sup>1</sup>

(cf: P.L.1999, c.380, s.10)

<sup>1</sup>3. R.S.34:15-49 is amended to read as follows:

34:15-49. a. The Division of Workers' Compensation shall have the

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exclusive original jurisdiction of all claims for workers' compensation benefits under this chapter. The judges of the Division of Workers' Compensation shall hereinafter be appointed on a bipartisan basis by the Governor, with the advice and consent of the Senate, to initial terms of three years at an annual salary, for the first year, in an amount equal to 75% of the annual salary of a Judge of the Superior Court. During the initial three-year term, each judge shall be subject to a program of evaluation developed by the Director of the Division of Workers' Compensation. Upon receipt of a satisfactory annual evaluation from the director, the annual salary of a nontenured judge shall be increased to  $78 \frac{2}{3}\%$  of the annual salary of a Judge of the Superior Court after one year;  $81 \frac{2}{3}\%$  of the annual salary of a Judge of the Superior Court after two years; and, after three years and upon tenure as provided pursuant to the provisions of this section, the annual salary of a tenured judge of compensation shall be 85% of the annual salary of a Judge of the Superior Court. Reappointment of a judge shall be by the Governor, with the advice and consent of the Senate. The director's evaluations shall be made available to the Senate Judiciary Committee if the candidate has been renominated by the Governor. Upon confirmation after the initial three-year term, a judge of the Division of Workers' Compensation shall have tenure, and shall serve during good behavior. All judges of compensation appointed prior to the effective date of P.L.1991, c.513 shall continue to have tenure and shall continue to serve during good behavior. The annual salary of the director shall be 89% of the annual salary of a Judge of the Superior Court. The Chief Judge of Compensation shall be the Director of the Division of Workers' Compensation and may be known as the Director/Chief Judge of the division.

In addition to salary, a judge of compensation regularly assigned as an administrative supervisory judge of compensation by the director shall receive additional compensation of \$2,500 per annum during the period of such assignment; and a judge of compensation regularly assigned as a supervising judge of compensation by the director shall receive

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additional compensation of \$1,500 per annum during the period of such assignment.

Judges of compensation shall not engage in the practice of law, shall devote full time to their judicial duties, and shall have been licensed attorneys in the State of New Jersey for 10 years prior to their appointments. The director of the division shall have the same qualifications for appointment and be subject to the same restrictions as a judge of compensation.

All judges of compensation shall be retired upon attaining the age of 70 years , except that any judge of compensation who has retired on pension or retirement allowance may, with the judge's consent, be recalled by the Director /Chief Judge of the Division of Workers' Compensation for service as a recalled judge in the Division of Workers' Compensation. No recalled judge shall serve beyond his 80th birthday.

Upon such recall the retired judge shall have all the powers of a judge of compensation and shall be paid a per diem allowance fixed by the Director/Chief Judge of the Division of Workers' Compensation. In addition the recalled judge shall be reimbursed for reasonable expenses actually incurred by him in connection with his assignment and shall be provided with such facilities as may be required in the performance of his duties. Such per diem compensation and expenses shall be paid by the State. Payment for services and expenses shall be made in the same manner as payment is made to the judges of the Division of Workers' Compensation from which he retired.

b. A increase in an annual salary of a judge or the director under subsection a. of this section that results due to the increase in the salary of a Judge of the Superior Court provided in N.J.S.2B:2-4 as amended in section 1 of P.L.1995, c.424 (N.J.S.2B:2-4) shall not be granted until July 1, 1996.<sup>1</sup>

(cf: P.L.1999, c.380, s.7)

<sup>1</sup>[2.] 4.<sup>1</sup> This act shall take effect immediately.